



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2008/0006
Information Commissioners Ref: FS50145322

Freedom of Information Act 2000 (FOIA)

Heard at Proclamation House, London	Decision Promulgated
On 8 September 2008	14 October 2008

BEFORE

DEPUTY CHAIRMAN

Peter Marquand
and

LAY MEMBERS

Jenni Thomson
Pieter de Waal

BETWEEN:

JOHN W STEVENSON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

CHIEF CONSTABLE OF WEST YORKSHIRE POLICE

Additional Party

Subject Matter:

FOIA – Whether information held s.1 – Absolute Exemptions – Personal data s.40

Cases:

Stevenson v United Trade Transport Union [1977] 2 AllER 941

Bromley v The Information Commission The Environment Agency EA/2006/0072
dated 31st August 2007

Barber v The Information Commissioner & The British Council EA/2006/0092 dated
the 14th November 2007

Representations:

For the Appellant: In person
For the Respondent: Mr James Boddy, Counsel
For the Additional Party: Mr David Jones, Counsel

DECISION

The Tribunal allows the appeal to the extent that the Decision Notice is substituted as set out below, because the Information Commissioner was not entitled to reach the conclusion that the Chief Constable of West Yorkshire Police would have been entitled to claim the exemption of section 40 of the Data Protection Act. The Tribunal dismisses the remainder of this appeal, which related to whether the Chief Constable of West Yorkshire Police held the information requested by Mr Stevenson.

SUBSTITUTED DECISION NOTICE

The Tribunal allows in part the appeal and substitutes the following Decision Notice in place of the Decision Notice dated 19th December 2007

**IN THE MATTER OF AN APPEAL TO THE INFORMATION TRIBUNAL
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000**

INFORMATION TRIBUNAL APPEAL No: EA/2008/0006
SUBSTITUTED DECISION NOTICE

Dated: 14 October 2008

Public authority: The Chief Constable of West Yorkshire Police
 PO Box 9
 Laburnum Road
 Wakefield
 West Yorkshire WF1 3QP

Name of Complainant: Mr J W Stevenson

Substitute Decision:

For the reasons set out in the Tribunal's Decision, the substituted Decision is that the Decision Notice of the 19th December 2007 is amended as the Tribunal is satisfied that the Additional Party does not hold the information requested. The Additional Party complied with section 1(1)(a) of the Freedom of Information Act by confirming to the Appellant by letters dated 2nd March 2005 and 11th April 2005 that it did not hold the disputed information.

Action required:

No action is required from The Chief Constable of West Yorkshire Police

Signed:

Peter Marquand, Deputy Chairman
Information Tribunal

Dated: 14 October 2008

Reasons for Decision

Summary Background

1. Mr Stevenson is seeking information to support his contention that there has been a conspiracy by West Yorkshire Police (WYP) and certain other individuals against him. In particular, he wishes WYP to confirm that a particular named police officer does not exist and to use any information that he obtains to try and set aside a criminal conviction from 1975. WYP state that they do not hold the information that Mr Stevenson seeks.

The request for information

2. By letter dated the 4th January 2005, addressed to Iain Cramphorn, Chief Constable of West Yorkshire Police, Mr Stevenson requested:

“... the illegal and false record you allegedly possess, and which you have shown and told non-policemen about.”

By way of a note, Mr Cramphorn was not the Chief Constable at this time.

3. On 2nd February, a further letter was sent by Mr Stevenson, addressed to Mr Cramphorn stating:

“I asked for information you had given [A] and [B], both non-police officers, and my opponents in Stevenson v. URTU.”

4. The details of the sequence of the correspondence and Mr Stevenson’s submissions upon it are dealt with below. Following a telephone conversation with Mr Stevenson, by letter dated 14th February 2005, WYP responded summarising their understanding of the request as follows:

“Any information or correspondence provided by West Yorkshire Police to [A] and Mr [B], in relation to cases held in Industrial Tribunals with yourself during May/June 1982 ([A]) and 7th and 8th April 1994 ([B])”

5. Following a response from WYP, Mr Stevenson made, in the letter dated 4th March 2005, the following further requests:

- a. To be provided with details of when a record of a telephone conversation was destroyed.
- b. Details of another telephone call said to have taken place during November or December 1973.
- c. To be given assurances that Mr Cramphorn (formerly Chief Constable of West Yorkshire Police) gave the Chairman of the Police Authority on not replying to, or giving him, in an understandable manner, a satisfactory reply to a subject access request that had previously been made by Mr Stevenson.

The requests for information in paragraphs 4 and 5 are the subject matter of this Appeal.

6. WYP replied to Mr Stevenson's initial request by letter dated 2nd March 2005 and enclosed a document setting out information and what WYP had done in relation to the request. Mr Stevenson complained and WYP therefore carried out a review of its original decision. That resulted in a letter of 11th April 2005 confirming the original decision that WYP did not hold information about Mr Stevenson, apart from a file that had been identified known as M57/02, which was provided to him on 9th March 2005. On 14th April 2005 Mr Stevenson complained to the Information Commissioner (the Commissioner) and it appears that the Commissioner investigated the position in 2007.
7. There was no information before the Tribunal about what happened in the intervening period, although it is not relevant to the issues before the Tribunal, we note that this is a long interval. Nevertheless, the Commissioner's Decision Notice is dated 19th December 2007 and concluded that the nature of the requests made by Mr Stevenson were such that the exemption in section 40(1) of the Freedom of Information Act (FOIA) was engaged i.e. the request was for personal data and the exemption meant that WYP was not in fact obliged to comply with section 1(1)(a), by virtue of section 40(5) FOIA.
8. Mr Stevenson appealed to the Tribunal by letter dated 26th December 2007 and by a further document dated 8th April 2008.

Appeal to the Tribunal

9. In the Decision Notice referred to above, the Commissioner decided to go on to make an assessment under section 42 of the Data Protection Act 1998 (DPA) concerning whether WYP had complied with that Act. Mr Stevenson indicated that pending the outcome of that review, he might not have wished

to proceed with this Appeal. However, in the event, by letter dated 7th April 2008 to Mr Stevenson, the Commissioner concluded that WYP had handled the request in accordance with the DPA. Accordingly, this Appeal proceeded and the Tribunal gave directions on 21st April 2008.

10. The final hearing took place on the 8th September 2008, when the Tribunal heard evidence from
 - Mr Stevenson, the Appellant;
 - Mr Steve Harding, Head of Information Management at WYP;
 - Mr Paul Kerry, Complaints Manager for the Professional Standards Department of WYP; and
 - Mr Andrew Earl, a Police Inspector, and at the relevant time the Freedom of Information Officer at WYP.
11. The Tribunal also had a witness statement from Mr Larry Sherrat, formerly a Superintendent at WYP.
12. The Tribunal also had the benefit of an agreed bundle of documents, which included witness statements from those witnesses from WYP who gave evidence on oath. They confirmed their witness statements and the truth of them on oath.
13. The Tribunal announced its decision at the end of the oral hearing on 8th September 2008 in relation to the issue of whether or not WYP held the information sought by Mr Stevenson. This is the full record of the Decision and the Tribunal's reasons for that Decision.

Issues for the Tribunal

14. At the directions hearing the Tribunal determined that the appeal concerned the information that was set out in paragraphs 4 and 6 of the Decision Notice and those paragraphs are set out in full below:

*“4. On 14 February 2005, the police responded to the complainant's request and offered the following summary of what it considered the complainant was requesting:
'Any information or correspondence provided by West Yorkshire Police to [a named individual] and [a second named individual], in relation to cases held in Industrial Tribunals with yourself during May / June 1982 and 7 and 8 April 1994'...*

6. *The complainant wrote to the police on 4 March 2005 requesting the M 57/02 file. In his letter the complainant made the following requests:*

- *...to be provided with details of when a record of a telephone conversation was destroyed. This conversation allegedly concerned the complainant and a West Yorkshire Police Data Protection Officer. The conversation is alleged to have concerned a mistaken assumption that the complainant had been a serving police officer and was offered to the complainant as a reason for the failure of the police to respond to his subject access request of 9 April 2002;*
- *...for details of another telephone call. The complainant asserted that this is alleged to have taken place during November or December 1973 and was made by a named Detective Constable. There appears to be some uncertainty regarding this person's exact surname and/or its spelling. The complainant asserts that the alleged telephone call concerned an incident where the Detective Constable instructed the complainant to attend Stockport CID and report a confession made by a named third party;*
- *...to be given assurances that Mr Cramphorn (formerly Chief Constable West Yorkshire Police) gave the Chairman of the police authority on not replying to, or giving him, in an understandable manner, a reply to his Subject Access request."*

15. The Tribunal also determined that the issues to be decided in the Appeal are as follows:

- a. Was the Commissioner wrong to conclude that all of the information requested was exempt under section 40 FOIA without having inspected the information?
- b. Does the Additional Party hold the information requested?

16. At the beginning of the appeal Mr Stevenson pointed out that the information that he sought concerning a telephone call in 1973, as set out in the second bullet point of paragraph 6 of the Decision Notice, was incorrectly recorded. Mr Stevenson says that it was Mr [A], who was a member of the URTU and not a police officer, who instructed him to attend Stockport CID to inform them of a confession made by a Mr [C]. Mr Stevenson says that after his conversation with Mr [A], he had a conversation with a Police Officer at Stockport CID, who told him not to attend. This is set out in more detail below under the evidence that has been given, but the Tribunal and the parties

proceeded on the version of events as provided by Mr Stevenson in the course of this Appeal and not on the version of events set out in the Decision Notice.

The Tribunal's Jurisdiction

17. The Tribunal's remit is governed by section 58 FOIA and this is set out below:

"58- Determination of Appeal.

(1) If on an Appeal under section 57 the Tribunal considers –

- a. That the Notice against which the Appeal is brought is not in accordance with the law, or*
- b. To the extent that the Notice involves an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*

the Tribunal shall allow the Appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the Appeal.

(2) On such an Appeal, the Tribunal may review any finding of fact on which the Notice in question was based."

18. The starting point for the Tribunal is the Decision Notice of the Commissioner but the Tribunal also receives evidence, which is not limited to the material that was before the Commissioner. The Tribunal, having considered the evidence, may make different findings of fact from the Commissioner and consider the Decision Notice is not in accordance with the law because of those different facts. Nevertheless, if the facts are not in dispute, the Tribunal must consider whether FOIA has been correctly applied.

Preliminary Point

19. Mr Stevenson has started legal action against the Commissioner in the County Court over his decision concerning the DPA and the letter dated 8th April 2008, which we have referred to above. Mr Stevenson raised a preliminary point that the information contained in the bundle in this Appeal that related to DPA should be struck out. He was concerned that the findings of this Tribunal might, in some way, affect the County Court's findings or jurisdiction. Both Mr Boddy and Mr Jones submitted that the Tribunal was

properly seized of this appeal and that it could proceed and that there was no question of estoppel arising. In particular, Mr Jones pointed out that WYP was not a party to any County Court proceedings.

20. The Tribunal's conclusion was that the Appeal could, and should, proceed. The County Court does not have jurisdiction in relation to an appeal under section 57 FOIA and the Tribunal does not have jurisdiction in relation to allegations concerning failures to comply with DPA. The Tribunal's conclusion was that there was no reason to remove the documentation concerning DPA from the bundle and it formed part of the background to this appeal.

The first issue: was the Commissioner wrong to conclude that all of the information requested was exempt under section 40 FOIA?

21. The nature of Mr Stevenson's requests are set out in paragraphs 4 and 5 above. The Commissioner's Decision is set out in paragraph 7 and 14 above. The conclusion was that the nature of Mr Stevenson's requests were such that they were requests for personal data and therefore exempt from the obligation to confirm or deny imposed by section 1 (1) (a) of FOIA. This conclusion was reached without the Commissioner reviewing any data, which of course would not have been possible because WYP had not located any information covered by these requests.
22. We can deal with this point shortly because the Commissioner concedes that it was wrong to conclude that all the information requested was exempt, as the request was wide ranging and not clearly defined. However, the Commissioner maintains that there may be cases where it would be proper to reach a view on the application of section 40 (1) FOIA without first inspecting the relevant information. An example is provided of a request by an individual to see their own health records. The Commissioner further submits that there is no absolute obligation on a public authority to inspect the material before claiming the exemption in section 40 (5) FOIA because of its particular wording. WYP submits that whether information is personal data can only be fully addressed when the request is considered in context.
23. It is not necessary, or probably helpful, for us to go into this in detail given the concessions that have been made. The Tribunal's conclusion is that the Commissioner was in error in stating that this request was a request only for Mr Stevenson's personal data and therefore exempt from consideration under FOIA. In the Tribunal's view, on straightforward reading of the requests for

information referred to above, there is more than a request for personal data alone.

24. Therefore, on this first issue the appeal is successful because the Commissioner was not entitled to reach the conclusion on the facts of this information request, that all of it was exempt from disclosure under section 40 FOIA.

The second issue: Does WYP hold the information requested?

The evidence

24. Mr Stevenson gave evidence to the Tribunal on oath and provided a great deal of detail about the background to his requests for information. Mr Stevenson was a member of the United Road Transport Union (URTU). He said in evidence that on Christmas Eve in 1973 he was instructed by another union member, Mr [A], to go to Stockport Police and inform them of a confession that another person, Mr [C] (also a member of the trade union), had apparently made. Mr Stevenson says that Mr [A] told him that the police who had asked him to do this were from Brighthouse Police Station. In evidence Mr Stevenson said that on Christmas Eve in 1973 he did not know the name of the officer with whom [A] had allegedly had this telephone conversation. Mr Stevenson said he found out that the officer was called Holdsworth or Houldsworth (we will use the spelling Holdsworth in this Decision) when Mr [A] was giving evidence in the Employment Appeal Tribunal several years during litigation concerning Mr Stevenson's sacking from his employment.
25. Mr Stevenson was involved in litigation against the URTU when he was suspended as a regional officer of the union. This case is reported in Stevenson v United Trade Transport Union [1977] 2 AllER 941. The Court of Appeal concluding that there had been a breach of the rules of natural justice. Mr Stevenson also told the Tribunal that in 1975 he had received a criminal conviction, the background to which concerned £5.20 worth of petrol. The chief prosecution witness was somebody called Mr [D]. Mr Stevenson said that this was appealed to the Court of Appeal but the appeal was "rejected by a "hairsbreadth". Mr Stevenson said that in the case against URTU Mr [D] was also a witness and gave evidence that contradicted the evidence that he had given in the criminal case referred to above, and that this amounted to perjury.

26. Mr Stevenson was also involved in an Industrial Tribunal in 1994 and it seems that at this time the individual called Mr [B] accused Mr Stevenson of working for Russia. Mr Stevenson said that he had been investigated previously about whether or not he was a KGB agent but he had been cleared by an investigation carried out by the, then, Lord Chancellor. In response to a direct question from the Tribunal Mr Stevenson confirmed that he was not a member of the KGB nor was he or had he been a member of the communist party. He said that at the time all of this false information was being fed by the URTU and the Freedom Association.
27. Mr Stevenson confirmed in evidence that none of this background history had anything do with WYP until 1982.
28. Mr Stevenson said that in relation to the allegation that an officer called Holdsworth had spoken to [A], WYP would not confirm that there was no such officer as Holdsworth. In relation to Mr [B] making reference to Mr Stevenson being a Russian agent, Mr Stevenson says that WYP did nothing about that allegation, which in Mr Stevenson's view could only have come from the Chief Constable of Greater Manchester Police at the time, Mr Anderton.
29. In cross examination Mr Stevenson accepted that he did not believe that WYP held any information that was covered by any of this requests for information, which are the subject matter of this Appeal. However, he said that WYP had not said so.
30. Mr Steven Harding gave evidence to the Tribunal under oath. He had been employed by WYP since the 10th October 1988 and had initially dealt with Mr Stevenson's FOIA request as WYP's Freedom of Information implementation manager. Now he is Head of Information Management at WYP. Mr Harding explained that he had been assisted in dealing with Mr Stevenson's FOIA request by Mrs Janice Gilbert, who had now retired from WYP, Inspector Jeffrey Baker and Inspector Andy Earl.
31. Mr Stevenson sent a letter dated 4 January 2005 addressed to 'Mr Ian Cramphorn' Chief Constable at WYP, which was a request for information referring to FOIA. This was in the Tribunal's bundle. However, this letter was not initially received by Mr Harding or his team. This letter was followed up by a further letter from Mr Stevenson which, from Mr Harding's evidence was undated, but we had a copy dated the 2nd February 2005 in our bundle. This letter which we will refer to as the "2nd February letter" alerted Mr Harding to the fact that Mr Stevenson was requesting information and a letter was sent to Mr Stevenson by Mr Harding on the 9th February 2005. Mr Harding pointed

to a record that Mr Stevenson had made requesting information and this entry is dated the 8th February. Mr Stevenson sent another letter dated the 9th February 2005 by special delivery and the bundle included a document from the Royal Mail confirming delivery of this letter on the 10th February 2005 to WYP. Mr Stevenson sought to make something out of the fact that WYP had started responding to his freedom of information request before receipt of this letter the 9th February. However, the Tribunal finds nothing unusual in this as it is clear that the “2nd February letter” had been received and the content of that letter clearly makes a request for information itself and the reply of WYP of 9th February 2005 acknowledges it as a request for information under FOIA.

32. At Mr Harding’s request Mrs Gilbert contacted Mr Stevenson and spoke to him on the telephone on the 10th February 2005 to clarify the request for information. It was on this date also that Mr Stevenson’s letter of 4th January 2005 was received by Mr Harding. Following the telephone conversation Mr Harding wrote to Mr Stevenson by letter dated 14 February 2005 setting out his understanding of the information request namely

“any information or correspondence provided by West Yorkshire Police to Mr [A] and Mr [B], in relation to cases held in industrial tribunals with yourself during May/June 1982 ([A]) and 7th and 8th April 1994 ([B]).”

Some time later, after the initial response by WYP, Mr Stevenson also asked for details of when records of telephone conversations were destroyed as set out in paragraph 5.1 and 5.2 of this Decision.

33. Mr Harding took us to copies of records of the searches which had been undertaken by the individuals referred to above. The results of those searches, as given in evidence by Mr Harding and also from the documentation contained within the file can be summarised as follows:

1. The team at WYP who deal with data protection requests could not identify information about Mr Stevenson. Mr Stevenson had made a request for his personal data to WYP in 2002 under the Data Protection Act. He had not been provided with any information at that point either, because none was in existence. Mr Harding confirmed this to be the case as part of his searches.
2. Special Branch, which is part of WYP, confirmed on more than one occasion that it held no information about Mr Stevenson.

3. No trace of an officer known as Holdsworth could be found. Enquiries were made at the personnel department, the force archivist, police pensions and a police officer who had worked at the same police station where it was said that Holdsworth would have worked.
 4. There was an officer with a similar name to Holdsworth, but he had never worked at Brighthouse.
 5. Records of telephone conversations held from 1973 would have been destroyed. Furthermore, telephone conversations other than those through a call centre are not recorded and therefore there would not be any records of the calls of the type sought by Mr Stevenson.
 6. Contact was made with Mr Paul Kerry who is the complaints manager for the professional standards department of WYP. This did identify some information, which we will deal with below.
34. Mr Harding wrote to Mr Stevenson by letter the 2nd March 2005 enclosing a schedule of steps that had been undertaken to look for the information and we have summarised that above. Mr Stevenson appealed to WYP and that appeal was rejected. But by this time Mr Harding's evidence was that 22 hours had been spent in responding to Mr Stevenson's request for information.
35. Mr Kerry gave evidence under oath to the Tribunal. Mr Kerry's job is to examine correspondence from members of the public to decide whether or not complaints made by members of the public against the police ought to be investigated. In response to a request from Mr Harding's team on the 9th February 2005 Mr Kerry confirmed 'we have a thickish file (M/57/02) on him in the cellar... all about some form of union involvement in the seventies... as you say, not much makes sense.' Mr Kerry explained in oral evidence and from his statement that the reference number from the file is derived as follows:
1. The M refers to 'Miscellaneous' the 57 refers to the number of the complaint and the 02 refers to the year that it was created i.e. 2002.
36. Mr Kerry said that the reference to "union involvement in the 1970s" came from the correspondence contained in the file, some of which was written by Mr Stevenson and set out the details of his union involvement in the

seventies, in much the same way as we have already recorded in this Decision. Mr Stevenson sought to cross examine Mr Kerry and suggest that he could have only written about union involvement in the 1970s if he already had available to him an earlier file. However, we do not make such a finding.

37. Mr Kerry also explained that there was evidence of a previous file, which had been destroyed. Computer print outs were produced showing that in 1992 Mr Stevenson had made various complaints and there had been correspondence with him. However those computer print outs confirmed that the file was destroyed on the 13th March 1998. The date the complaint was received was recorded as 13 November 1992 and the subject of that complaint was recorded as “collusion between the Police and United Trans [presumably transport] UN [presumably Union]” (the text in square brackets is ours).
38. Mr Kerry explained that this computerised print out had been obtained from a now defunct computer system. It was slightly unusual in that one of the dates under a heading ‘date filed’ was the 1st January 1989 and Mr Kerry could not explain why that date was included as it seems that none of the file actually started until 1992. He explained that this system came into use on the 1st January 1989 and it may be that that explained the date.
39. Mr Kerry explained that the file would have been about allegations of collusion between the Police and the union and there had been an investigation, which was finalised according to the summary print out. In any event Mr Kerry confirmed that the file was not in existence and he could find nothing else. In cross examination Mr Stevenson sought to obtain evidence that Mr Kerry knew more than was in fact available from the file that had been disclosed. This was because in his witness statement Mr Kerry said “Mr Stevenson alleged that officers had lied in Court about various criminal matters and that his freedom of information requests had been ignored.”
40. Mr Stevenson’s point was that the reference to “officers” meant that Mr Kerry knew that police officers had lied in Court. However, the Tribunal notes that this was not actually something that Mr Stevenson had alleged. The individuals who he said lied were not police officers. Mr Kerry explained that he had obtained this part of the statement from his understanding of Mr Stevenson’s own correspondence. Mr Jones, Counsel for WYP pointed out that “officers” could mean union officers and not just police officers. The Tribunal does not think that there is anything in this point raised by Mr Stevenson. Mr Stevenson has repeated at great length, and in various pieces of correspondence, the background as he sees it. In the Tribunal’s

view it is not always easy to follow the correspondence and it is perfectly understandable that Mr Kerry should set out his understanding of Mr Stevenson's complaints from Mr Stevenson's correspondence in the way that he did.

41. Mr Kerry did confirm that he had been a police officer at Brighouse 30 years ago. However, he did not know an officer known as Holdsworth and he had never heard of the "[C] case" until Mr Stevenson raised it.
42. Mr Stevenson has also made various complaints to the Independent Police Complaints Commission (IPCC) and various documents from these complaints were set out in the bundle. In essence, in 2007 Mr Stevenson started complaining to the IPCC about the conduct of the various individuals involved in this FOI request. Mr Kerry was involved in that process although none of these matters were taken forward.
43. Mr Andrew Earl, who is an ordained priest of the Church of England and a Police Inspector at WYP gave evidence on oath to the Tribunal. Mr Earl was appointed on the 20th March 2006 as the Force Freedom of Information Officer working for Mr Harding. Prior to that date he was not involved with Mr Stevenson's request, although he said he was aware of the investigation Mr Harding and Mrs Gilbert were undertaking.
44. Mr Earl was in receipt of correspondence from Mr Stevenson and also dealt with correspondence from the Commissioner's Office during his investigations. On the 23rd April 2007 Mr Earl said that he had had a conversation with the Information Commissioner's Investigator concerning Mr Stevenson's request for 'what assurances were given by Mr Cramphorn to the chairman of the police authority'. Mr Earl had spoken to the Chief Constable's Secretariat and the Office of the Police Authority but could find no record of any such conversations. The former chief constable had died and the chair of the police authority had changed. His enquiries could go no further.
45. In his statement and in his oral evidence Mr Earl confirmed that he had checked and repeated the various investigations that had been undertaken by Mr Harding and Mrs Gilbert. Mr Earl also told the Tribunal that before the Freedom of Information Act had come into force WYP had undertaken an audit to look at records management. Therefore, they had a good idea of where information was held. Mr Earl knew that Mrs Gilbert had made a number of enquiries. Mr Earl checked the criminal information system, performed a multi database search, which he did personally. He contacted

Mr Kerry and reconfirmed the position. He told the Tribunal he could not think of anywhere else to look and even contacted the Major Crime Unit and had the historical files physically checked and there was no reference to any of the information sought by Mr Stevenson. Mr Earl also confirmed to the Tribunal that this is not a case of “neither confirming nor denying” in other words this is not a case where information existed that WYP did not want to even confirm or deny the existence of, for national security reasons. The simple position, according to Mr Earl, was that WYP had not been able to identify any information covered by Mr Stevenson’s requests. Mr Earl said that he had searched using Mr Stevenson’s details and also those of [A]. He did not look for a file on Mr [C] or an informer named as [C]. He explained this did not fall into his thought process at that time.

46. Mr Stevenson cross examined all of the witnesses. The Tribunal had to intervene in relation to a large number of the questions that were asked because either they were not questions or because the questioning had become argumentative. Mr Stevenson also, as the hearing progressed, asked questions which became of a more serious nature including accusing Mr Kerry of conspiracy. The solicitor of WYP was accused of not telling the truth. The Tribunal asked the witnesses who gave evidence on behalf of WYP whether they were hiding any information or whether information had been destroyed by them or at their request and each of the witnesses at WYP denied that that was the case. The Tribunal is clearly of the view that the witnesses from WYP gave evidence honestly and helped the Tribunal as best they could. There is no evidence before the Tribunal to substantiate any claims of potential criminal offences, lying to the Tribunal or of WYP or its staff otherwise hiding information that is relevant to Mr Stevenson’s request.

The Law

47. Section 1(1) FOI states:

Any person making a request for information to a public authority is entitled—
(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.

48. What amounts of information is sets out in that Section 84 and as follows:

“information” (subject to sections 51(8) and 75(2)) means information recorded in any form;

Sections 51(8) and 75(2) are not relevant.

49. The Tribunal was referred to previous decisions of the Tribunal on what 'holds' means namely: Bromley v The Information Commission The Environment Agency EA/2006/0072 dated 31st August 2007 and Barber v The Information Commissioner & The British Council EA/2006/0092 dated the 14th November 2007.
50. The Tribunal's conclusion is that in relation to establishing whether or not a public authority holds information, the public authority must conduct a reasonable search. The reasonableness of the search needs to be judged against all of the circumstances of the case. Whether or not the information is held needs to be determined on a balance of probability i.e. more likely than not.
51. Mr Stevenson's submissions on the various authorities were based on the facts of those authorities, which he said were not applicable. However, it is not the facts that are important but the legal principles that they establish. The Tribunal is not bound by previous Tribunal decisions but, this Tribunal is of the view that the approach in Bromley and followed in Barber is the right one.

Submissions

52. Mr Stevenson's submissions were detailed but the key points can be summarised as follows:
 1. There is a conspiracy against him by WYP.
 2. WYP have failed to confirm to him that Holdsworth does not exist, even though he does not believe that Holdsworth exists and this is evidence of conspiracy.
 3. The way WYP has responded to this request is evidence of the conspiracy.
 4. He has been branded as a vexatious complainant in order to avoid WYP investigating various serious matters that would embarrass WYP.
 5. Natural justice means that Mr Stevenson ought to have the information that he wants.
 6. Legal authority is that he must be able to confront his accusers.
 7. WYP knew that sworn evidence was not true and has covered this up.
 8. WYP was in contempt of a civil case and were guilty of conspiracy and collusion.

53. On behalf of WYP Mr Jones' submissions were that the entirety of Mr Stevenson's case is based on a fallacy. That fallacy was that WYP had maintained to him that there was somebody called Holdsworth, however, Mr Jones said there was not a scintilla of evidence that WYP had ever said anything like that. There was a paradox in that Mr Stevenson was asking WYP to produce information. He asserts the authority does not hold it and Mr Jones' submission was that was an abuse of FOIA. WYP had carried out a number of searches and did not find anything and there was nothing else that WYP could do.
54. The Commissioner's submissions were that there was no evidence to suggest that the information sought was held by WYP. In fact Mr Stevenson did not believe that it is held and that this was an abusive of process. Sufficient enquiries have been made.

Findings

55. The Tribunal's conclusion is that there is no evidence that the information sought by Mr Stevenson is held by WYP, as defined within FOIA. Furthermore, WYP has conducted a reasonable search. In particular, the initial requests by Mr Stevenson did not make any reference to the case of Mr [C] and it was reasonable for WYP not to look at the [C] file (if such a thing exists) bearing in mind the extensive searches that were made. In particular, there is no evidence that any member officer of WYP actually told Mr [A] to do anything. The Tribunal has no idea of the basis upon which Mr [A] said what he said about being informed by Holdsworth. The Tribunal notes that the reference to someone called Holdsworth only materialised several years after the original conversation took place.
56. The Tribunal wants to make it clear that it has not made any findings of fact in relation to the background set out by Mr Stevenson concerning the conversations and allegations about Mr [A], Mr [B], Mr [C] or Mr [D]. It is the Tribunal's view that the most Mr Stevenson can argue on this aspect is that the Tribunal ought to be careful in case there is truth in the allegations made by Mr Stevenson, which mean that there is a motive for WYP to withhold information from him. As we have indicated above, in our view there is no evidence to support the allegation that WYP has withheld information or that there is some form of conspiracy by WYP against Mr Stevenson in relation to the information that he seeks.

57. Part of the confusion that has arisen in this case is because responses by WYP have been written on the basis of what Mr Stevenson has previously written. It seems this led Mr Stevenson to suppose that individuals knew more about him than in fact they do. They are merely repeating what he has told them. Mr Stevenson does not even believe that there is someone called Holdsworth and he has confirmed that he is not a member of the KGB or a Russian agent in evidence. There is no evidence of a reason why WYP would be interested in the Industrial Tribunals that he was involved in and there seems no motive here. Mr Stevenson is obviously extremely aggrieved and feels that he has been falsely convicted of a criminal offence, and that may or may not be the case, but the Tribunal is not in a position, nor is it the correct forum, to determine such an issue.
58. Mr Stevenson's submissions about natural justice and his references to House of Lords authorities and submissions on the right of an accused to be confronted with the allegations made against them are simply not relevant to the issues before the Tribunal. The issue for the Tribunal is whether the information is held by the public authority and that is all. This is not an exercise of disclosure within civil or criminal proceedings, it is a specific jurisdiction within the Freedom of Information Act.
59. For the reasons given above the Tribunal dismisses this aspect of the appeal.
60. At the conclusion of the appeal West Yorkshire Police made an application for its costs. That matter will be dealt with separately.

[Note: In the record of its decisions the Tribunal is required by Regulation 28(4)(a) of the Information Tribunal (Enforcement Appeals) Rules 2005 (SI 2005/14) to have regard to the desirability of safeguarding, amongst other matters, the privacy of data subjects and for that purpose may make any necessary amendments to the text of its Decision. The Tribunal has applied this in this Decision and referred to certain individuals by letter rather than by name.]

Signed:

Peter Marquand
Deputy Chairman

Dated 14 October 2008